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15 **IN THE UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE**

18 **VICKI R. SEIDEL**

19 Plaintiff,
20 v.

21 **UNITED STATES OF AMERICA,**
22 Defendant.

23 CASE NO: 5:07-CV-03141

24 **MOTION FOR TEMPORARY RESTRAINING ORDER**

25 Vicki R. Seidel, by and through her attorneys, Robert Alan Jones, and John McCahill
26 hereby files her motion for Temporary Restraining Order against the United States of America
27 including its Commissioner of Internal Revenue pursuant to Rule 65 Federal Rules of Civil
28 Procedure for the reasons states *infra*.

29 **Jurisdiction**

30 On June 14, 2007, the plaintiff herein filed a complaint in this Honorable Court pursuant to
31 U.S.C. § 7426 for injunctive relief and damages due to wrongful levies against Vicki Seidel's
32 property authorized by the Commissioner of the Internal Revenue Service. The United States has
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1 waived sovereign immunity for the underlying action under 26 U.S.C. § 7426 which provides if a
 2 levy has been made on property of any person other than the person against whom is assessed the
 3 tax out of which such levy arose, that person who claims an interest in or lien on such property may
 4 bring a civil action against the United States ...in a district court of the United States. Further, the
 5 United States has further waived its rights under the Anti-Injunction Act pursuant 26 U.S.C. §
 6 7426(b)(1).

7 The instant motion is brought pursuant Federal Rule of Civil Procedure 65(a), (b)
 8 and 26 U.S.C. § 7426(b)(1) which states in pertinent part: "If a levy or sale would irreparably injure
 9 rights in property which the court determines to be superior to rights of the United States in such
 10 property, the court may grant an injunction to prohibit the enforcement of such levy"

11 **FACTS**

12 Vicki Seidel has had her personal bank account levied and 100% of her salary levied. The
 13 seizures of Vicki Seidel's property (monies) were made in the absence of notice, demand, assessment
 14 or allowing Plaintiff a right to a due process hearing pursuant to IRC Sec. 6330.

15 Without notice and opportunity for a hearing, the United States, wrongfully levied the bank
 16 account of Vicki Seidel, from Washington Mutual Bank, account no. 0980711488 on or about May
 17 29, 2007 (See Notice of Levy , Exhibit 1). Furthermore, Defendant United States on June 12, 2007
 18 has wrongfully attempted to levy 100% of Vicki Seidel's salary from her employment ignoring
 19 statutory exemptions. (See Notice of Levy on Wages, Salary and Other Income, Exhibit 2). The
 20 amounts subject to levy are about \$4,400. for June, 2007.

21 The underlying tax debt is not that of Vicki Seidel. Mr. Thomas Seidel, the president of T.E.
 22 Seidel Electric, Inc.(" Electric"), was allegedly assessed with a 100% penalty pursuant to 26 U.S.C.
 23 §6672 for failing to collect and pay over certain payroll taxes owed to the IRS on October 23, 1996.
 24 (Exhibit 3, Declaration of Vicki Seidel). Mr. Seidel is married to Vicki Seidel, a California resident,
 25 and the Plaintiff herein.(Exhibit 3).

26 Mrs. Vicki Seidel was absolved of responsibility for any of Electric's payroll taxes in a letter
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1 from Steven Penrod of the IRS dated May 13, 1999. (See Exhibit 4).

2 The monies wrongfully levied /seized on several occasions were from a citizen who had no
3 tax obligation to the United States government, nor the Internal Revenue Service, and was not related
4 to the underlying transaction which is the cause of the seizures. (See Declaration of Vicki Seidel,
5 Exhibit 3).

6 **The Government Cannot Prevail**

7 The seizures were in the absence of notice, demand, assessment or allowing Plaintiff a right
8 to a due process hearing pursuant to IRC Sec. 6330, and the United States may not prevail as a matter
9 of law. Further, Vicki Seidel was absolved of responsibility for any of the underlying payroll taxes
10 in a letter from Steven Penrod of the IRS dated May 13, 1999, and in their collections efforts for these
11 same taxes the United States cannot prevail as a matter of law. Finally, the ten year collections period
12 following alleged assessment of the 100% penalty against Mr. Thomas E. Seidel has expired, and the
13 penalty is no longer collectible against anyone as a matter of law.

14 **Irreparable Injury**

15 Vicki Seidel is the mother of infant children and the seizure of 100% of her compensation will
16 irreparably injure her and her children in that she will not have the funds available to her to support
17 her children and herself. Furthermore, this current levy is interfering with Vicki Seidel's employment
18 relationship with her employer and her professional reputation in the employment community in
19 which she works. Finally, levy of 100% of Vicki Seidel's salary on a continuing basis is against the
20 intent of the Internal Revenue Code and public policy.

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WHEREFORE, Plaintiff, Vicki Seidel, prays that the Court grant the instant motion for a temporary Restraining Order and schedule a hearing regarding preliminary injunctive relief in this case to prevent the IRS from levying and other collection efforts by the IRS, including levies of her bank accounts and to award 100% compensation for her employment as soon as practicable.

DATED: This 15th day of June, 2007.

Respectfully submitted,

/s/ Robert Alan Jones

Robert Alan Jones

Pro hac vice

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